

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IMHOTEP JORDAN, Jr.,
aka JOHN JORDAN,
CDCR #C-71742,

Plaintiff,

vs.

Defendant.

Civil No. 11cv2032 MMA (WVG)

ORDER:

(1) DISMISSING CIVIL ACTION FOR FAILING TO PAY FILING FEES AND FOR FAILING TO MOVE IN *IN FORMA PAUPERIS*; AND
(2) DISMISSING ACTION AS FRIVOLOUS PURSUANT TO 28 U.S.C. § 1915A

Plaintiff, currently incarcerated at Calipatria State Prison, in Calipatria, California, and proceeding pro se, has filed a civil action entitled “Instrument of Clarification of the Private Legal Process” [ECF No. 1].

I. FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS

Any party instituting a civil action, suit or proceeding in a district court of the United States, other than a writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay only if the party is granted leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th

1 Cir. 1999). However, Plaintiff has not prepaid the \$350 filing fee required to commence a civil
 2 action; nor has he submitted a Motion to Proceed IFP. Therefore, the case must be dismissed
 3 pursuant to 28 U.S.C. § 1914(a).

4 **II. Initial Screening per 28 U.S.C. § 1915A(b)**

5 The Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915A, obligates the Court to
 6 review complaints filed by anyone “incarcerated or detained in any facility who is accused of,
 7 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions
 8 of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after
 9 docketing” and regardless of whether the prisoner prepay filing fees or moves to proceed IFP.
 10 See 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any
 11 portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may
 12 be granted. 28 U.S.C. § 1915A(b); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

13 While Plaintiff’s action is far from clear, Plaintiff is apparently seeking to sue a United
 14 States District Judge for unspecified reasons. Plaintiff refers to himself as a “free born living
 15 breathing flesh and blood neter [god] created sovereign sentient being” and seeks to “clarif[y]
 16 the private legal process.” (Compl. at 1.) A complaint is frivolous “where it lacks an arguable
 17 basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Here, the Court
 18 finds Plaintiff’s claims to be frivolous under § 1915A because they lack even “an arguable basis
 19 either in law or in fact,” and appear “fanciful,” “fantastic,” or “delusional.” *Neitzke*, 490 U.S.
 20 at 325, 328. Thus, the Court dismisses the entirety of Plaintiff’s Complaint as frivolous pursuant
 21 to 28 U.S.C. § 1915A.

22 **II. CONCLUSION AND ORDER**

23 For the reasons set forth above, the Court hereby:

24 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
 25 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

26 **IT IS FURTHER ORDERED that:**

27 (2) Plaintiff’s Complaint is **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915A.
 28 Moreover, because the Court finds amendment of Plaintiff’s claims would be futile at this time,

1 leave to amend is **DENIED**. See *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir.
2 1996) (denial of a leave to amend is not an abuse of discretion where further amendment would
3 be futile); see also *Robinson v. California Bd. of Prison Terms*, 997 F. Supp. 1303, 1308 (C.D.
4 Cal. 1998) (“Since plaintiff has not, and cannot, state a claim containing an arguable basis in
5 law, this action should be dismissed without leave to amend; any amendment would be futile.”)
6 (citing *Newland v. Dalton*, 81 F.3d 904, 907 (9th Cir. 1996)).

7 (3) Further, this Court **CERTIFIES** that any IFP appeal from this Order would not
8 be taken “in good faith” pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v. United States*, 369
9 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent appellant
10 is permitted to proceed IFP on appeal only if appeal would not be frivolous).

11 || (4) The Clerk of Court shall close the file.

IT IS SO ORDERED.

14 || DATED: September 6, 2011

Michael M. - Avello

Hon. Michael M. Anello
United States District Judge